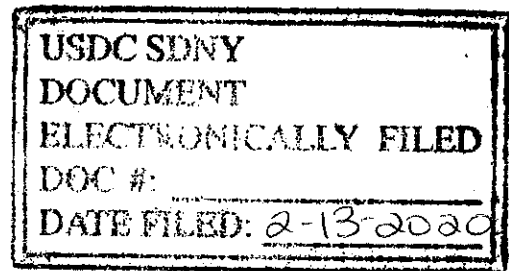


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



IN RE: 650 FIFTH AVENUE AND  
RELATED PROPERTIES

08 Civ. 10934 (LAP)

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

Having considered the arguments raised by the parties at oral argument on February 12, 2020, the Court concludes as follows:

1. The rental income generated by the building located at 650 5th Ave. ("the Building") constitutes an interest in real property subject to the limitations set forth in 18 U.S.C. § 985.
2. The restraints on the Building's rental income imposed by the protective order entered on December 12, 2019 (see dkt. no. 2162) constitute a pretrial seizure of real property.
3. Under 18 U.S.C. § 985(d)(1), the Government may effect such a pretrial seizure of real property only after (i) a judicial notice of application for a warrant and a hearing that provides Claimants a meaningful opportunity to be heard or (ii) an ex parte showing of exigent circumstances by the Government.
4. The Government has made no showing demonstrating that exigent circumstances exist. As such, the Court must

follow the procedures commanded by 18 U.S.C.


§ 985(d)(1)(B)(i), i.e., issue a notice of application for warrant and hold a hearing whereby the Claimants may be heard on the issue of probable cause allowing for pretrial seizure of the Building.

5. Consequently, the Government must release to Claimants rental income generated by the Building between December 12, 2019, i.e., the date of the issuance of the Second Circuit's mandate vacating the previous forfeiture judgment (see dkt. no. 216), and the date of any eventual judicial determination of probable cause.

The Court will set forth the reasoning for its decision in a forthcoming opinion. In the meantime, the parties shall confer and propose by letter a briefing schedule for the issues discussed at the February 12 oral argument, including the issue of probable cause for pretrial seizure. After reviewing the proposed briefing schedule, the Court will set a date for a hearing on the issue of establishing probable cause for any pretrial seizure of the Building's rental income.

**SO ORDERED.**

Dated: New York, New York  
February 13, 2020

  
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LORETTA A. PRESKA  
Senior United States District Judge